

ORDINANCE NO. 08-92

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 22 ENTITLED "CODE ENFORCEMENT" OF THE CODE OF ORDINANCES OF THE CITY OF HIALEAH, FLORIDA AND IN PARTICULAR, ADDING A NEW ARTICLE, ARTICLE V. RED LIGHT TRAFFIC SAFETY, TO PROVIDE REGULATIONS TO ALLOW FOR THE USE OF AN UNMANNED CAMERAS/MONITORING SYSTEM TO PROMOTE COMPLIANCE WITH RED LIGHT SIGNAL DIRECTIVES AND TO ADOPT A SUPPLEMENTAL CODE ENFORCEMENT SYSTEM FOR RED LIGHT SIGNAL VIOLATIONS THROUGH CIVIL PENALTIES; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah is located in a high density traffic area and regularly experiences traffic incidents related to the failure of motorists to obey traffic control devices; and

WHEREAS, running red lights causes a safety hazard affecting every citizen and traveler in the City; and

WHEREAS, the violation of red light traffic signals is recognized as the number one cause of urban motor vehicle collisions; and

WHEREAS, the National Highway Traffic Safety Administration recognizes the act of violating a red light traffic signal as the most dangerous form of aggressive driving; and

WHEREAS, the apprehension of red light traffic signal violators through means of law enforcement observance, chase and citation is difficult, dangerous and expensive; and

WHEREAS, the installation and use of traffic control photographic systems by means of unmanned cameras allow law enforcement resources to be more efficiently utilized in responding to other serious criminal and traffic offenses; and

WHEREAS, red light legislation providing civil infractions against the motor vehicle owner has proven extremely effective at reducing red light violations and traffic accidents; and

WHEREAS, the City of Hialeah is vested with home rule authority pursuant to Article VII, Section 2 of the Florida Constitution and Chapter 166, Florida Statutes, to enact an ordinance making a failure to stop for a red light a code violation, and to provide for enforcement of such violations; and

WHEREAS, Section 316.008, Florida Statutes, grants municipalities, with respect to streets and highways under their jurisdiction and within the reasonable exercise of its police power, the authority to regulate and monitor traffic by means of law enforcement officers and security devices; and

WHEREAS, pursuant to Fla. Atty. Gen. Op. 05-41 (July 12, 2005), the Attorney General confirmed the authority of a municipality to enact an ordinance making the failure to stop at a red light a code violation, to use unmanned cameras to monitor intersections for such violations and to record the license tag numbers of vehicles involving in such violations; and

WHEREAS, the purpose and intent of this ordinance is to issue uniform traffic citations through the City's code enforcement procedures as further set forth herein; and

WHEREAS, the City of Hialeah desires to reduce violations of red light traffic signals at intersection within the City in order to protect the public health, safety and welfare of the community by implementing an automated photographic red light traffic enforcement system.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: Chapter 22 entitled " of the Code of Ordinances of the City of Hialeah, Florida is hereby amended, by adding a new article, Hialeah Code entitled "Article V. Red Light Traffic Safety", to read as follows:

Chapter 22

CODE ENFORCEMENT

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Article V. Red Light Traffic Safety

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Sec. 22-250. Purpose.

The purpose of this article is to authorize the use of an unmanned cameras/monitoring system to promote compliance with red light signal directives as described in this article and to adopt a civil enforcement system for red light signal violations or infractions. This ordinance prohibits vehicles from obstructing, occupying or passing into an intersection when a steady red light is projected from a traffic control device. This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit county, state or city law enforcement officers from issuing a traffic citation for a red light signal violation pursuant to state law.

Sec. 22-251. Use of image capture technologies.

The city shall utilize image capture technologies as a supplemental means of monitoring compliance with state laws regarding traffic control signals, while assisting law enforcement personnel in enforcing such laws, which are designed to protect and improve public health, safety and welfare. This article shall not supersede, infringe, curtail or impinge upon state laws regarding red light signal violations or conflict with such laws. Nothing herein shall conflict with the jurisdiction of the county to install and maintain traffic signal devices. This article shall serve to enable the city to provide enhanced enforcement and respect for authorized traffic signal devices. The city may utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Citations issued pursuant to this article shall be addressed using the city special master pursuant to section 22-259 hereof and not through uniform traffic citations or county courts. This article shall not bar the use of uniform traffic citations and the county courts when city police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.

Sec. 22-252. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Intersection means the area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two roads that join or intersect one another at, or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Motor vehicle means any self-propelled vehicle not operated upon rails or guide way, but not including any bicycle or electric personal-assisted mobility device.

Owner or vehicle owner means a person or entity identified by the Florida Department of Highway Safety and Motor Vehicles, or other state vehicle registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

Recorded images mean those images recorded by a traffic control signal monitoring system/device:

(a) On two or more photographs, two or more electronic images, two or more digital images, digital or video movies; or any other medium that can display a violation; and

(b) showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

Red zone infraction means a traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly-erected traffic control device at a time when the traffic signal for

such vehicle's direction of travel was emitting a steady red signal.

Special master means the city code enforcement special master, as described in Chapter 22, Article III, of the Code.

Traffic control infraction review officer means a city department employee designated by the police chief pursuant to section 22-256(b) to review recorded images and issue red zone infractions based upon those images.

Traffic control signal means a device exhibiting different colored lights or colored lighted arrows, successively, one at a time, or in combination, using only the colors green, yellow or red that indicate and apply to motor vehicles drivers as provided in F.S. § 316.075.

Traffic control signal monitoring system or device means an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles obstructing, occupying or passing into an intersection against a steady red light signal indication.

Sec. 22-253. Adherence to red light traffic control signals.

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a motor vehicle that is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near of the side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other

traffic proceeding as directed by the traffic control signal at the intersection.

Sec. 22-254. Violation.

A violation of this article, known as a red zone infraction, shall occur when a motor vehicle does not comply with the requirements of section 22-253 hereof. Violations shall be enforced through civil penalties, fines and collection as provided in this article exclusively.

Sec. 22-255. 120 days notice; introductory period.

When the red light camera system is operable at the intersections selected by the city for its pilot program, for 120 days from the date the system is deemed operable by the police chief and mayor, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction according to routine traffic enforcement techniques. Commencing 121 days from the date the system is deemed operable as referenced above, the vehicle owner is subject to the provisions in this article and no warning shall be given pursuant to this article.

Sec. 22-256. Review of recorded images.

(a) The owner of the vehicle, which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation. The recorded image shall be sufficient grounds to issue a notice of violation.

(b) The police chief shall designate a traffic control infraction review officer, who shall be a sworn city police officer or who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The traffic control infraction review officer shall review recorded images prior to the issuance of a notice of violation to ensure the accuracy and integrity of the recorded images. Once the traffic control infraction review officer verifies the accuracy of the recorded images, such review officer shall complete a report, and a notice of violation shall be sent to the vehicle owner at the address on record with the

Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

Sec. 22-257. Notice of violation.

The notice of violation shall include the following contents in lieu of the requirements set forth for other citations in section 22-183:

- (a) The name and address of the vehicle owner;
- (b) The license plate number and vehicle identification number of the vehicle;
- (c) The make, model and year of the vehicle;
- (d) Notice that the infraction charged is pursuant to this article;
- (e) The location of the intersection where the infraction occurred;
- (f) Notice that there are recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction;
- (g) Images depicting the infraction; and
- (h) A signed statement by the traffic control infraction review officer that, based on inspection of recorded images, the vehicle was involved in and was utilized to commit a red zone infraction.

Sec. 22-258. Vehicle owner responsibilities.

- (a) A vehicle owner receiving a notice of violation may pay the assessed civil penalty pursuant to the instructions on the notice of violation or appear before the special master to contest the notice of violation.
- (b) The failure to pay the assessed civil penalty and failure to appear before the special master to contest the notice of violation shall be considered an admission of

liability and in such case, an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.

Sec. 22-259. Hearing before the special master/ hearing officer.

(a) The city code enforcement special masters are authorized to hold hearings related to the enforcement of this article. A hearing shall be schedule for all notices of violation for which the vehicle owner timely requests an administrative hearing pursuant to section 22-185(c) of the Code.

(b) The hearing shall be held pursuant to the procedures set forth in section 22-186 of the Code except that that the hearing officer's decision shall determine whether or not there is a red zone violation and person or entity responsible and if there is a violation, then determine the amount of the civil penalty and administrative costs. The hearing officer shall have no further authority to order payment of repair costs, issue fine reductions, or set compliance dates as provided in section 22-186(i)(3) and section 22-186(k)(5) hereof. References to code inspectors in section 22-186 and other provisions of chapter 22, article III, of the Code shall apply to traffic control infraction review officers.

(c) Recorded images indicating a red zone infraction, verified by the traffic control infraction review officer, are admissible in any proceeding before the special master to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.

(d) Unless an affidavit is provided pursuant to section 22-260, it is presumed that the person or entity registered as the vehicle owner with the Florida Department of Highway Safety and Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.

Sec. 22-260. Vehicle owner affidavit of non-responsibility.

(a) In order for the vehicle owner to establish that the motor vehicle was, at the time of the red zone infraction, either: (1) in the care, custody or control of another person without the consent of the registered owner, or (2) was subject to a short term (less than six months) automobile rental agreement entered into between the vehicle operator and a automobile rental agency, which is licensed as required by applicable law and is authorized to conduct business in Florida, within 15 days from the date listed on the notice of violation, the vehicle owner is required to furnish to the city an affidavit setting forth circumstances demonstrating, either: (1) that the motor vehicle was not in the vehicle owner's care, custody or control, and was not in the care, custody or control of another person with the vehicle owner's consent, or (2) that the motor vehicle was subject to a short term (less than six months) automobile rental agreement between the automobile rental agency receiving the notice of violation and the vehicle operator and provide a true and correct copy of the short term automobile rental agreement, as applicable.

The affidavit must be executed in the presence of a notary, and include

1. If known to the vehicle owner, the name, address and driver's license number of the person who had care, custody and control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged red zone infraction; or
2. The name, address and driver's license number of the person who rented the motor vehicle from the automobile rental agency that received the notice of violation, at the time of the alleged red zone infraction; or
3. If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction; and

4. The following language immediately above the signature line shall read: "Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true."

(b) Upon timely receipt of a sufficient affidavit pursuant to this section, any prosecution of the notice of violation issued to the vehicle owner shall be terminated. Proceedings may be commenced by the city against any responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures that apply to vehicle owners.

Sec. 22-261. Exceptions.

This article shall not apply to red zone infractions involving vehicle collisions (unless no citation or charge is used for a violation of state law relating to such collisions) or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a notice of violation be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indications for the same event or incident.

Sec. 22-262. Civil penalties.

A violation of this article shall be deemed a non-criminal, non-moving violation for which a civil penalty, as set forth in this section, shall be assessed. As the violation relates to this article and not to the state law, no points as otherwise provided in F.S. § 322.27, shall be recorded on the driving record on the vehicle owner or responsible party. The schedule for red zone infractions are as follows, notwithstanding civil penalties for other code or ordinance violations set forth in section 22-184 of the Code:

<u>Red zone infraction</u>	<u>\$125.00 for first infraction</u> <u>and \$125.00 for second</u> <u>infraction within 24 months</u> <u>of the first infraction</u> <u>\$250.00 for third infraction</u> <u>within 24 months of the</u> <u>first infraction and for</u>
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each additional infraction
within 24 months of the
first infraction

Sec. 22-263. Notice.

The city shall, to the extent practicable, at selected right-of-ways or entry points to the city, cause to be erected and maintained signs, providing notice of this article. Failure to erect, maintain or create these signs shall not invalidate or impair any enforcement of this article. Such signs shall contain the following language and be readily visible from adjacent rights-of-way:

NOTICE OF TRAFFIC MONITORING

ALL PEOPLE ARE HEREBY ADVISED THAT
CERTAIN INTERSECTIONS WITHIN THE CITY ARE
SUBJECT TO RED LIGHT TRAFFIC SIGNAL
ENFORCEMENT BY PHOTOGRAPHIC MEANS AND
THAT NOTICES OF VIOLATION MAY BE ISSUED TO
VEHICLE OWNERS AND/OR OPERATORS FOR THE
VIOLATIONS OF TRAFFIC SIGNALS, PURSUANT TO
THE CITY'S CODE ENFORCEMENT SYSTEM.

HIALEAH POLICE DEPARTMENT

Section 2: **Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: **Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall

occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Inclusion in Code.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

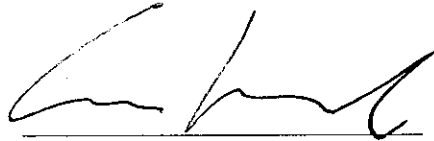
Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the

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Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

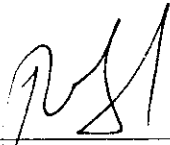
PASSED and ADOPTED this 9th day of December, 2008.



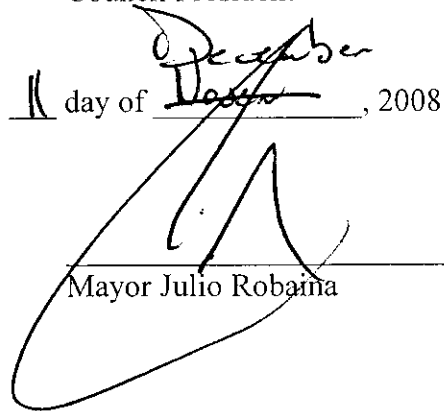
Carlos Hernandez
Council President

Attest:

Approved on this 11 day of December, 2008.



Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

This is corrected Ordinance 08-92. A scrivener's error was reported at the City Council meeting of June 9, 2009.

Ordinance was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes".